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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/727,603	02/07/2001	Steven L. Bernstein	3627.110	5671

7590 05/01/2003

Howard L. Rose
P. O. Box 220596
Hollywood, FL 33022

EXAMINER
SHUKLA, RAM R

ART UNIT	PAPER NUMBER
1632	

DATE MAILED: ~~05/01/2003~~ 02/26/03

10

Please find below and/or attached an Office communication concerning this application or proceeding.

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Howard L. Rose
Suite 311
1001 North Federal Highway
Hallandale, FL 33009

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SHUKLA, RAM R	
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Office Action Summary	Application No.	Applicant(s)	
	09/727,603	BERNSTEIN, STEVEN L.	
	Examiner	Art Unit	
	Ram R. Shukla	1632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *31 July 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8* is/are pending in the application.

4a) Of the above claim(s) *7 and 8* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. Applicant's election of 7-31-02 in Paper No. 6 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 7 and 8 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Hill et al (US 6095147, dated 8-1-00, filing date 12-1-1994).

Hill et al teach a photodynamic treatment method that comprises a step of delivering a photosensitive agent to a biological tissue and activating a selected part of the agent with electromagnetic radiation. The method is also directed to vascularity containing tissues and the treatment removes the vascularity (for example, see claim 1, 14, 15, 18-20 and other claims and rest of the specification). Column 3 describes the agents and laser source.

Accordingly, the method of claim 1 is anticipated by Hill et al.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hill et al (US 6095147, dated 8-1-00, filing date 12-1-1994) in view of Ruschke et al (US 6,063,109, 5-16-00, filing date 9-17-1998).

Hill et al teach a photodynamic treatment method that comprises a step of delivering a photosensitive agent to a biological tissue and activating a selected part of the agent with electromagnetic radiation. The method is also directed to vascularity containing tissues and the treatment removes the vascularity (for example, see claim 1, 14, 15, 18-20 and other claims and rest of the specification). Column 3 describes the agents and laser source. The art does not teach using 500 to 600 micron spot at 50 mcirowatttts or the time of directing the spot being 7-30 seconds, or the laser is agrgon green or frequency double YAG laser.

Ruschke et al teaches a device for the coherent amplifications of electromagnetic oscillations and method to dissolve tissues, healing wounds, burns,

tumors etc. The art also teaches argon laser device, neodymium-yag laser and different power outputs (see columns 1-3).

At the time of the invention, it would have been obvious to an artisan of ordinary skill in the art to modify the method of Hill et al and use the laser used by Ruschke such as an argon laser or frequency double laser or neodymium-yag laser or any other laser at the cited energy level with a reasonable expectation of success. An artisan of skill would have been motivated to use the cited parameters because a rat is a commonly used experimental animal and an artisan would have been motivated to modified and standardize parameters for the size of rat.

8. No claim is allowed.

When amending claims, applicants are advised to submit a clean version of each amended claim (without underlining and bracketing) according to § 1.121(c). For instructions, Applicants are referred to http://www.uspto.gov/web/offices/dcom/olia/aipa/index.htm.

Applicants are also requested to submit a copy of all the pending/under consideration claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ram R. Shukla whose telephone number is (703) 305-1677. The examiner can normally be reached on Monday through Friday from 7:30 am to 4:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Reynolds, can be reached on (703) 305-4051. The fax phone number for this Group is (703) 308-4242. Any inquiry of a general nature, formal matters or relating to the status of this application or proceeding should be directed to the William Phillips whose telephone number is (703) 305-3413.

Ram R. Shukla, Ph.D.
Primary Examiner
Art Unit 1632

Ram R Shukla
RAM R. SHUKLA, PH.D
PATENT EXAMINER